

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CARLY R. KALoz,

Plaintiff

___ CIV ___

COMPLAINT

-against-

PRUDENTIAL INSURANCE COMPANY
OF AMERICA DISABILITY MANAGEMENT
SERVICES AND MOUNT SINAI MEDICAL
CENTER

Defendants.
-----X

Plaintiff, Carly R. Kaloz, by her attorneys, Della Mura & Ciacchi LLP as and for her complaint respectfully alleges upon information and belief as follows:

1. The plaintiff, Carly R. Kaloz brings this action to recover money damages and for equitable relief under the provisions of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §1001 et seq. to recover health care benefits and counsel fees which were denied to her and with the purpose of interfering with the rights to which plaintiff would have become entitled under an employee benefit plan.
2. At all relevant times herein, plaintiff is a resident of the County of Westchester, State of New York with her principal residence at 1354 Midland Avenue, Apartment 2T, Bronxville, New York 10708.
3. Upon information and belief, defendant Mount Sinai Medical Center is a corporation with its principal place of business within the City and State of New York.
4. Upon information and belief, Prudential Insurance Company of America Disability Management Services is an insurance entity authorized to conduct business in the State of New York with its principal place of business in Philadelphia, Pennsylvania.

JURISDICTION

5. Jurisdiction over the plaintiff's claims is conferred on this Court pursuant to 29 U.S.C. §1132, 28 U.S.C. §1131, and 28 U.S.C. §1143(A)(4) and the plaintiff requests the Court to exercise supplemental jurisdiction over the plaintiff's state law claim under 28 U.S.C. §1367(A).

PARTIES

6. Plaintiff is, and at all times relevant to this action was, a "participant" in the defendants' employee benefits plans as defined by 29 U.S.C. §1002(7).

7. The defendant, The Prudential Insurance Company of America Disability Management Services is a corporation authorized to conduct business in the State of New York with its principal place of business in Philadelphia, Pennsylvania. The defendant Mount Sinai Medical Center is an employer engaged in an industry or activity affecting commerce within the meaning of 29 U.S.C. §1002(5), (12). Defendant Prudential Insurance Company of America Disability Management Services is the administrator, 29 U.S.C. §1002(16)(A) and the plan sponsor 29 U.S.C. §1002(16)(B) of the defendant Mount Sinai Medical Center employee benefits plan.

8. The defendant Mount Sinai Medical Center has maintained and does maintain various employment benefit plans, including a comprehensive health insurance plan for all permanent and full-time exempt employees, including disability insurance, life insurance with benefits continuing for employees who retire under the defendant's retirement plan or become permanently and totally disabled.

Defendant's plan described in Paragraph "8" above is an employee benefit plan within the meaning of 29 U.S.C. §1002(3) and 29 U.S.C. §1140.

9. Plaintiff Carly R. Kaloz was working as a pediatric echocardiographer at Mount Sinai Medical Center. At that time, she became a participant in the defendant's retirement plan and group insurance plans.

10. At all times relevant to this Complaint, plaintiff performed her job duties in a satisfactory and competent manner that was acceptable to the defendant Mount Sinai Medical Center.

11. Commencing on or about July 1, 2014, plaintiff began experiencing severe physical symptoms which included but were not limited to fibromyalgia with superimposed connective tissue disease.

12. The plaintiff underwent extensive medical treatment and submitted documentation and ultimately applied for short-term disability (STD) and long-term disability (LTD) under Group Policy 46682 issued to the Mount Sinai Medical Center.

Pursuant to said claim, the claimant was Carly R. Kaloz, Claim No. 11992351, Control No. BR46682/E0006.

13. Ultimately, on August 5, 2015 defendant Prudential Insurance Company of America Disability Management Services denied the second appeal request of plaintiff Carly R. Kaloz for both short-term disability benefits and long-term disability benefits.

All conditions precedent to the commencement of this action have been met and all prior available remedies have been exhausted.

AS AND FOR FIRST CLAIM: ERISA VIOLATION

14. Plaintiff repeats and re-alleges the allegations set forth in Paragraph "1" through "13" above as though fully set forth herein.

15. The defendant Prudential Insurance Company of America Disability Management Services Denial of the second appeal of claimant dated August 5, 2015 is annexed hereto and made a part hereof as Exhibit "A" and is fully incorporated by reference herein.

16. Defendant's denial of short-term disability benefits (STD) and long-term disability benefits (LTD) was arbitrary, illegal, capricious, unreasonable and not made in good faith and is in breach of defendant's fiduciary duty owed to plaintiff.

Said decision interfered with the plaintiff's right to continued health benefits under defendants' employee benefits plan with plaintiff's expectancy of disability insurance benefits under defendants' insurance and retirement plans causing plaintiff to lose substantial health insurance benefits, life insurance benefits, retirement benefits, wages and other fringe benefits of employment.

As a direct and proximate result of the actions of the defendants, plaintiff has been caused to incur attorney's fees.

As a direct and proximate result of the actions of the defendants, plaintiff has sustained damages in an amount to be determined by this Court at the time of trial including back pay, reinstatement of benefits, counsel fees, etc.

WHEREFORE the plaintiff requests that this Court exercise jurisdiction over these claims and award:

- A. Full legal and equitable relief under ERISA including back pay, short-term disability benefits, long-term disability benefits, pre-judgment interest, etc.
- B. Compensatory damages.
- C. Attorney's fees and costs.

D. An assessment of the statutory penalty provided in 29 U.S.C. §1132(C) a declaration that all rights and benefits due plaintiff are vested and non-forfeitable or in the alternative a money judgment for all claims due and owing.

E. All other relief that the law and equity allow.

Dated: Bronx, New York
December 21, 2015.

Yours, etc.

Della, Mura & Ciacci LLP

By: 

Walter F. Ciacci (I.D. No. 5398)
Attorneys for Plaintiff
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Bronx, New York 10469
718-405-1500

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CARLY R. KALOSZ,

Plaintiff,

-against-

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MANAGEMENT SERVICES AND MOUNT SINAI MEDICAL CENTER,

Defendants

COMPLAINT

DELLA MURA & CIACCI LLP
ATTORNEYS AND COUNSELLORS AT LAW

Attorney(s) for

Plaintiff

981 ALLERTON AVENUE
BRONX, NEW YORK 10469

TELEPHONE (718) 405-1500

Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.

Dated:

Signature

Print Signer's Name.....

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

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NOTICE OF
ENTRY

that the within is a (certified) true copy of a
entered in the office of the clerk of the within-named Court on

20

☐

NOTICE OF
SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the
Hon. _____, one of the judges of the within-named Court,
at _____
on _____ 20____, at _____ M.

Dated:

DELLA MURA & CIACCI LLP
ATTORNEYS AND COUNSELLORS AT LAW

Attorney(s) for

To:

981 ALLERTON AVENUE
BRONX, NEW YORK 10469